

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RUBEN CHAVARRIA,

Petitioner,

vs.

MATTHEW CATE et al.,

Respondents.

CASE NO. 11-cv-8 – IEG (RBB)

ORDER:

(1) ADOPTING IN FULL REPORT
AND RECOMMENDATION, [Doc.
No. 13];

(3) GRANTING MOTION TO
DISMISS, [Doc. No. 11]; and

(4) DENYING and DISMISSING
PETITION FOR HABEAS CORPUS.

Currently before the Court is Ruben Chavarria (“Petitioner”)’s First Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. [Doc. No. 6.] Pursuant to a plea agreement, Petitioner pleaded guilty to evading an officer and driving under the influence of alcohol causing injury, and he admitted to having a prior conviction and a prior serious felony conviction. He was sentenced to twelve years and four months in state prison as provided by the plea agreement. Petitioner argues that his sentence enhancements were illegally imposed in violation of the rule announced in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

Respondent filed a Motion to Dismiss, asserting that the First Amended Petition was barred by the one-year statute of limitations set forth in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 28 U.S.C. § 2244(d)(1), and lodged the relevant portions of the state record.

[Doc. No. 11.] Petitioner did not file an opposition to the Motion to Dismiss. The Court referred the matter to Magistrate Judge Ruben B. Brooks, who issued a Report and Recommendation concluding that the First Amended Petition was untimely and that neither statutory nor equitable tolling applied. [Doc. No. 13.] The Magistrate Judge recommended that the Court grant the Motion to Dismiss and dismiss the First Amended Petition. [*Id.*] The time for filing objections to the Report and Recommendation has passed without Petitioner filing any objections.

DISCUSSION

The Court reviews *de novo* those portions of the Report and Recommendation to which objections are made. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*

In this case, the time for filing objections to the Report and Recommendation has passed without Petitioner filing any objections. Having reviewed the First Amended Petition, Respondent’s Motion to Dismiss, the relevant portions of the state record lodged by Respondent, and the Report and Recommendation, the Court hereby approves and ADOPTS IN FULL the Report and Recommendation. *See id.*


CONCLUSION

Having reviewed the Report and Recommendation and there being no objections, the Court: (1) **ADOPTS IN FULL** the Report and Recommendation; (2) **GRANTS** Respondent’s Motion to Dismiss; and (3) **DENIES and DISMISSES** the First Amended Petition.

The Court also denies a certificate of appealability because Petitioner has not “made a substantial showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated: November 8, 2011


IRMA E. GONZALEZ, Chief Judge
United States District Court